

Supreme Court, U.S.  
FILED

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OFFICE OF THE CLERK  
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

PITTSBURGH TRANSPORTATION CO.,  
*Petitioner,*  
vs.

CAROL PACKARD, JAMES SINCLAIR, HOWARD BOOKER,  
FLORENCE MARIE CAMP, EMANUEL A. BRATTEN,  
RONALD E. DOMINICI, CHARLES R. ROTHERT, SR.,  
RAYMOND DAVIS, DONALD S. SPADE, BEVERLY J.  
BENNETT, RANDER J. THOMPSON, DARRYL SIGEL,  
LAVERA RAWLINGS, LEROY F. WISE, DAVID L. MORRIS,  
EDWARD R. CROSBY, GERALDINE REINHEIMER,  
PATRICIA ZILCH, SHANNON McGRATH, DARRYL  
TURNER and NORBERT G. ABEL,

*Respondents.*

On Petition for a Writ of Certiorari to the United States Court of  
Appeals for the Third Circuit

**PETITION FOR A WRIT OF CERTIORARI**

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February 13, 2006

## **QUESTIONS PRESENTED**

- I. Whether prearranged trips for handicapped and elderly individuals under the auspices of the Americans with Disabilities Act place a motor carrier's operations within the stream of interstate commerce under the "special arrangement" criteria, as set forth in *United States v. Yellow Cab*, 332 U.S. 218 or are common arrangements or through ticketing required, as the Third Circuit has held?
- II. Did the congressional grant of jurisdiction in Title II, Part B of the Americans with Disabilities Act to the Department of Transportation give the Secretary of Transportation per se federal commerce power over paratransit service, or has Congress exceeded its commerce clause powers by granting the Department of Transportation the power to promulgate regulations Under Title II, Part B of the Americans with Disabilities Act?

## **PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT**

The caption contains the name of all parties to this proceeding. Pursuant to Rule 29.6, Pittsburgh Transportation Company states:

1. Pittsburgh Transportation Company is a private Corporation incorporated under the laws of Pennsylvania and headquartered in Pittsburgh, Pennsylvania.
2. Tyburn Limited owns one hundred percent of the stock of Pittsburgh Transportation Company.
3. Tyburn Limited is a private Corporation incorporated under the laws of Delaware and headquartered in Pittsburgh, Pennsylvania.
4. YC Holdings, Inc., owns one hundred percent of the stock of Tyburn Limited.
5. YC Holdings, Inc., is a private corporation incorporated under the laws of Pennsylvania and headquartered in Pittsburgh, Pennsylvania.
6. There are no parents, subsidiaries and/or affiliates of Pittsburgh Transportation that have issued shares or debt securities to the public.

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## **PETITION FOR A WRIT OF CERTIORARI**

The Pittsburgh Transportation Company (“PTC”) respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

### **OPINIONS BELOW**

The opinion of the Court of Appeals, filed on August 12, 2005, is reported at 418 F.3d 246. The opinion is reproduced in the appendix hereto (“App.”) at 1a. The June 2, 2003, memorandum opinion and order of the United States District Court for the Western District of Pennsylvania is unreported and is reproduced at App. 25a.

### **JURISDICTION**

The judgment of the Court of Appeals was entered on August 12, 2005. PTC timely filed a petition for panel rehearing, or, in the alternative, rehearing en banc, on August 26, 2005. The Court of Appeals denied the petition for rehearing on November 14, 2005, App. 53a. PTC timely filed a Motion to Stay the Mandate to permit PTC to file a petition for writ of certiorari in this Court.<sup>1</sup> The Court of Appeals granted PTC’s motion to stay on December 2, 2005, App. 55a.

This Court’s jurisdiction is invoked under 28 U.S.C. § 1254(1).

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<sup>1</sup> Although the petition was filed on November 10, 2005, the Court of Appeals did not enter it on the docket until November 14, 2005, because the Court had not yet ruled on PTC’s rehearing petition. The clerk entered the petition on the docket as soon as the Court had ruled on the motion for rehearing.

## STATUTORY PROVISIONS INVOLVED

1. Section 7(a)(1) of the Minimum Wage and Hour Act of 1938 (commonly known as the Fair Labor Standards Act), 52 Stat. 1063, as amended, 29 U.S.C. 207(a)(1), provides in relevant part:

"Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

2. Section 13(b)(1) of the Fair Labor Standards Act, 52 Stat. 1067, as amended, 29 U.S.C. 213(b)(1), provides in relevant part:

"Maximum hour requirements. The provisions of section 7 [29 USCS § 207] shall not apply with respect to--

"any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935 [49 USCS § 31502]."

3. Section 204(b) of the Motor Carrier Act of 1935, 49 USCS 31502(b), provides in relevant part:

"Motor carrier and private motor carrier requirements. The Secretary of Transportation may prescribe requirements for--

(1) qualifications and maximum hours of service of

employees of, and safety of operation and equipment of, a motor carrier; and

(2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation."

4. Section 13501 of the Motor Carrier Act (otherwise known as the ICC Termination Act of 1995), 49 U.S.C.13501, provides in relevant part:

"The Secretary and the Board have jurisdiction, as specified in this part [49 USCS §§ 13101 et seq.], over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier--

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway."

5. Section 223 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12143, provides in relevant part:

"(a) General rule. It shall be considered discrimination for purposes of section 202 of this Act [42 USCS § 12132] and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, Para transit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2)

in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system."

6. Part 390 of the Federal Motor Carrier Safety Regulations, 49 C.F.R. § 390.5, provides in relevant part:

"Interstate commerce means trade, traffic, or transportation in the United States --

- (1) Between a place in a State and a place outside of such State (including a place outside of the United States);
- (2) Between two places in a State through another State or a place outside of the United States; or
- (3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States."

## **INTRODUCTION**

This case confronts the Court with the critical question of whether a common carrier of passengers, providing pre-paid and pre-arranged service to the qualified public under the auspices of the Americans with Disabilities Act (ADA) and the Department of Transportation (DOT), is involved in interstate commerce when a portion of its passengers use the carrier's intrastate services as a part of a larger interstate journey. In our instant case, there is a split among the Circuits concerning what type and kind of "special arrangement", as set forth in this Court's holding in *United States v. Yellow Cab*, 332 U.S. 218, 67 S.Ct. 1560, 91 L.Ed. 2010 (1947), must be demonstrated by motor carriers of passengers in order for the conduct of their business to qualify as interstate transportation and, therefore, fall under the exemption set forth under the Fair